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No. 01-1232

Supreme Court U.S.
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IN THE

Supreme Court of the United States

DR. RICHARD KAUFMAN, on behalf of himself and all others similarly situated, *et al.*,

Petitioners,

v.

ALLIED PILOTS ASSOCIATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

RUSSEL H. BEATIE
Counsel of Record
BEATIE AND OSBORN LLP
521 Fifth Avenue
New York, NY 10175
(212) 888-9000

Attorneys for Petitioners

(Additional Counsel listed on signature page)

173388

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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The Fifth Circuit's decision below improperly applied the preemption doctrine in *San Diego Building Trades Council Millmen's Union Local 2020 v. Garmon*, 359 U.S. 236 (1959), a National Labor Relations Act case, to Petitioner's case, a Railway Labor Act case. This Court established the preemption doctrine applicable to Railway Labor Act cases in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994).

Respondent's opposition to Petitioner's Petition for a Writ of Certiorari mirrors the mistake made by the Fifth Circuit and misstates Petitioner's position. Respondent attempts to apply *Garmon* to Petitioner's case and addresses Petitioner's arguments for granting its Petition by arguing inapplicable *Garmon* principles.

The *Garmon* doctrine has not been routinely extended to apply to the RLA. Resp. at 6 n.3 (citing *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969)). This Court stated in *Jacksonville* that NLRA preemption analysis does not apply to RLA cases.

> It should be emphasized from the outset, however, that the National Labor Relations Act cannot be imported wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes. We refer to the NLRA's policies not in order to "apply" them to petitioners' conduct — for we conclude that this would be neither justified nor practicable — but only to determine whether it is within the general penumbra of conduct held protected under the [RLA] or whether it is beyond the pale of any activity thought permissible.

Jacksonville, 394 U.S. at 383-384 (internal footnotes and citations omitted).

Petitioner's claims are governed by the analysis in *Hawaiian Airlines*, in which the Court defined "the scope of federal preemption under the RLA." *Hawaiian Airlines*, 512 U.S. at 248. Accordingly, the Court established the following rule:

> A state law cause of action is not pre-empted by the RLA if it involves rights and obligations that exist independent of a [collective bargaining agreement].

Hawaiian Airlines, 512 U.S. at 260; Pet. at 5.

NLRA preemption analysis under *Garmon* and RLA preemption analysis under *Hawaiian Airlines* are different. Pet. at 4. *Hawaiian Airlines* is the controlling authority applicable to this case. Pet. at 6. Petitioner does not claim that this case is governed by *Garmon* preemption analysis, let alone any exception to *Garmon*. Resp. at 7. Just as it did in *Hawaiian Airlines*, the Court in this case must determine whether or not the RLA preempts Petitioner's state law claim for tortious interference. The rule established by the Court in *Hawaiian Airlines* is unrelated to the "complete preemption" or "contractual preemption" doctrines. Resp. at 6 n.3. Complete preemption allows a federal court to retain jurisdiction over a state law claim that has been removed to the federal courts on the basis of a federal law defense. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987). Respondent's use of the term "contractual preemption" is unclear. Neither *Hawaiian Airlines* nor *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988) use the term, and Respondent does not explain it. The rule in *Hawaiian Airlines* speaks for itself and has nothing to do with either of these doctrines.

CONCLUSION

For the reasons stated here, we respectfully request that the petition for a writ of certiorari be granted.

Respectfully submitted,

THOMAS VERTICCHIO
PATZIK, FRANK
& SAMOTNY, LTD.
150 South Wacker Drive,
Suite 900
Chicago, IL 60606
(312) 551-8300

PATRICK E. CATALANO
LAW OFFICES OF
PATRICK E. CATALANO
781 Beach Street, Suite 333
San Francisco, CA 94109
(415) 788-0207

RUSSEL H. BEATIE
Counsel of Record
BEATIE AND OSBORN LLP
521 Fifth Avenue
New York, NY 10175
(212) 888-9000

JOHN L. MALESOVAS
DAVID H. MARTIN
MALESOVAS & MARTIN, L.L.P.
425 Austin Avenue, 10th Floor
P.O. Box 1709
Waco, TX 76703-1709
(254) 753-1777

W.D. MASTERSON, III
D. ELIZABETH MASTERSON
KILGORE & KILGORE
700 McKinney Place
3131 McKinney Avenue
LB103
Dallas, TX 75204
(214) 969-9099

Attorneys for Petitioners